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## Constitutional Law: Does a Racing Trainer Have a Property Right in His License?

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# CONSTITUTIONAL LAW: DOES A RACING TRAINER HAVE A PROPERTY RIGHT IN HIS LICENSE?

*State ex rel. Paoli v. Baldwin*, 31 So.2d 627 (Fla. 1947)

The State Racing Commission suspended a horse trainer's license for one year when a test showed that benzedrine had been administered to his winning horse. It was not shown who had given the stimulant, but a Racing Commission rule made the trainer the "absolute insurer" of the condition of his horse entered in a race, regardless of acts of a third party.<sup>1</sup> The trainer as relator instituted mandamus proceedings to secure reinstatement. On first hearing, writ denied, the court holding that the rule was a reasonable means of preventing dishonest racing and that the trainer consented to its operation when he accepted the license. On rehearing, *Held*, the rule was invalid in that it established a conclusive presumption of the trainer's guilt, thereby depriving him of possession of his license, a valuable property right, without due process of law.<sup>2</sup> Peremptory writ issued, Chief Justice Thomas, Justice Barns, and Justice Chapman dissenting.

The Fourteenth Amendment<sup>3</sup> protects the right to work for a living in the common, useful occupations of the community,<sup>4</sup> and this has been classed as a property right.<sup>5</sup> A person has no inherent right, however, to engage in an occupation which endangers the public health, safety, or morals.<sup>6</sup> The state, in the exercise of its police power, can absolutely prohibit such an occupation,<sup>7</sup> and a license to engage in this type of business is not property but is a mere privilege or permit to do something which without the license would be unlawful.<sup>8</sup>

<sup>1</sup>Rules of Horse Racing, Florida State Racing Commission, Rule 117 (1942-43).

<sup>2</sup>U. S. CONST. AMEND. XIV, §1; FLA. CONST., DECL. OF RIGHTS §12.

<sup>3</sup>U. S. CONST. AMEND. XIV, §1.

<sup>4</sup>*Yick Wo v. Hopkins*, 118 U. S. 356 (1886).

<sup>5</sup>*State v. Ives*, 123 Fla. 401, 167 So. 394 (1936); *State v. Rose*, 97 Fla. 710, 122 So. 225 (1929).

<sup>6</sup>*Crowley v. Christensen*, 137 U. S. 86 (1890); *Permenter v. Younan*, 31 So.2d 387 (Fla. 1947).

<sup>7</sup>*Ohio v. Deckerbach*, 274 U. S. 392 (1927); *Crowley v. Christensen*, 137 U. S. 86 (1890); *Myers v. Cincinnati*, 128 Ohio St. 235, 190 N. E. 569 (1934).

<sup>8</sup>*Permenter v. Younan*, 31 So.2d 387 (Fla. 1947); *State v. State Boxing Commission*, 163 La. 418, 112 So. 31 (1927); *Johnson v. Liquor Control Commission*, 266 Mich. 682, 254 N. W. 557 (1934). *But cf.* *Midwest Beverage Co. v. Gates*, 61 F. Supp.

The intoxicating liquor traffic,<sup>9</sup> pool rooms,<sup>10</sup> public dance halls,<sup>11</sup> and boxing matches<sup>12</sup> are subject to prohibition at legislative will. A license to operate one of these businesses confers a mere privilege on the licensee, and protection of the privilege lies not in the due process guaranties but in the terms of the license statute, whatever those terms may be.<sup>13</sup>

The business of animal racing can also be absolutely prohibited.<sup>14</sup> In legalizing the racing of horses and dogs with the accompaniment of pari-mutuel gambling,<sup>15</sup> the Florida legislature initiated a system of licensing and regulating a business previously unlawful.<sup>16</sup> The legalizing statute itself declares unauthorized race meetings public nuisances.<sup>17</sup> Racing in Florida is not a right but a privilege, which may be granted or withdrawn at the option of the state.<sup>18</sup>

In the principal case, the court relied on a Maryland decision which held invalid a racing commission regulation with an effect similar to that of the Florida rule.<sup>19</sup> Without distinguishing racing from ordinary occupations, the court stated that racing in Maryland was a lawful business, that the trainer had a right to follow his profession, and that the regulation deprived him of that right without due process of law. An opposite

688 (N. D. Ind. 1945).

<sup>9</sup>Crowley v. Christensen, 137 U. S. 86 (1890); *Permenter v. Younan*, 31 So.2d 387 (Fla. 1947).

<sup>10</sup>Ohio v. Deckebach, 274 U. S. 392 (1927); *Commonwealth v. Kinsley*, 133 Mass. 578 (1882).

<sup>11</sup>*People v. Wallace*, 160 App. Div. 787, 145 N. Y. Supp. 1041 (2d Dep't 1914); *Bungalow Amusement Co. v. Seattle*, 148 Wash. 485, 269 Pac. 1043 (1928).

<sup>12</sup>*Fitzsimmons v. State Athletic Commission*, 146 N. Y. Supp. 117 (Sup. Ct. 1914).

<sup>13</sup>Crowley v. Christensen, 137 U. S. 86 (1890); *Permenter v. Younan*, 31 So.2d 387 (Fla. 1947); *State v. State Boxing Commission*, 163 La. 418, 112 So. 31 (1927); *Commonwealth v. Kinsley*, 133 Mass. 578 (1882); *Bungalow Amusement Co. v. Seattle*, 148 Wash. 485, 269 Pac. 1043 (1928).

<sup>14</sup>*Grainger v. Douglas Park Jockey Club*, 148 Fed. 513 (C. C. A. 6th 1906); *State Racing Commission v. Latonia Agricultural Ass'n.*, 136 Ky. 173, 123 S. W. 681 (1909); *Louisiana Greyhound Club, Inc. v. Clancy*, 167 La. 511, 119 So. 532 (1928).

<sup>15</sup>FLA. STAT. 1941, c. 550.

<sup>16</sup>FLA. COMP. GEN. LAWS §7672 (1927).

<sup>17</sup>FLA. STAT. 1941, §550.25.

<sup>18</sup>*State v. Stein*, 130 Fla. 517, 178 So. 133 (1938); *State v. Rose*, 122 Fla. 413, 165 So. 347 (1936).

<sup>19</sup>*Mahoney v. Byers*, 49 A.2d 600 (Md. 1946).